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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,912	03/02/2004	Robert J. Yatka	112703-323	1409

7590 08/04/2004  
Bell, Boyd & Lloyd, LLC  
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EXAMINER

CORBIN, ARTHUR L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No:

10/170,912

Applicant(s)

YATKA ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 3-2-04
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-32 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-32 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. The disclosure is objected to because of the following informalities: the preliminary amendment to page 1 of the specification omits the current status of parent SN 08/849.292.

Appropriate correction is required.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-17 and 21-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler et al (5,258,197).

Wheeler et al discloses chewing gum containing a plasticizer which can be a structured triacylglycerol prepared by interesterifying triacetin, tripropionin and a long chain fatty acid source, e.g. canola oil, soybean oil or tristearin. The interesterifying may result in attachment on a glycerol backbone in accordance with applicant's disclosure on page 6 of the specification (see cols 8, 13, 14 and 18, Examples 2 and 34 and claim 6 of Wheeler et al).

Additionally, Wheeler et al discloses that the structured triacylglycerols disclosed therein can be used as a partial or full replacer of synthetic or natural fat in chewing gum (col. 14, lines 11-14 and 29). Moreover, applicant admits that salatrim is generic to the low calorie fat replacers used in Wheeler et al (page 5, lines 16-18 of applicant's specification).

The amount of salatrim used by applicant is a typical plasticizer, emulsifier or softener amount used in chewing gum compositions.

The claimed chewing gum components and type of chewing gum base are all conventional, as disclosed in applicant's specification (pages 1-2). Polyvinyl acetate (PVA) is conventional in most gum bases (page 8, lines 9-11 of applicant's specification).

4. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grey et al (5,192,562) in view of Wheeler et al.

Grey et al describes chewing gum formulations that comprise PVA, fat and elastomers (Col. 1, lines 41 to 50). Suitable elastomers include triglycerides and lecithin (col. 5, lines 25 to 28), Wheeler et al describes structured triacylglycerols as low calorie replacements for synthetic or natural fat in food products (col. 1 and 14). It would have been obvious to a person of ordinary skill in the art who desired to lower the calorie content of Grey et al's chewing gum composition to replace the triglyceride of Grey et al with the structured triacylglycerols of Wheeler et al.

The process of formulating the chewing gum of Grey et al with the structured triacylglycerols disclosed in Wheeler et al would render the claimed method obvious.

Using the claimed triacylglycerols as compatibilizers does not provide any patentable distinction over mixing such compounds with a gum base, as occurs in Wheeler et al.

By rendering it obvious to replace the triglycerides of Grey et al with the triacylglycerols of Wheeler et al, Wheeler et al suggests replacement of a softener with this compound

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since fats are well known softeners. Thus, a prima facie case of obviousness has been established.

5. This is a continuation of applicant's earlier Application No. 08/849,292. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af  
July 30, 2004

  
ARTHUR L. CORBIN  
PRIMARY EXAMINER  
8-3-04